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of a wilful tort or a grossly negligent act. In the case mentioned we deal with a combination of these two principles. The act was a wilful tort committed on the plaintiff's premises and was a grossly negligent act in itself. And, considering all the circumstances, there was clearly a violation of a duty owed to the plaintiff. The damage or miscarriage was the direct consequence of an unbroken line of causation, and, in accordance with the general rule stated above, recovery was properly allowed. Though there are no cases exactly in point, it is believed to be the correct conclusion, both on reason and principle, and by the analogies of the law.<sup>33</sup>

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DEVICES TO PREVENT OR CONFER JURISDICTION UPON THE FEDERAL COURTS.—It is well recognized that devices to confer jurisdiction upon federal courts for the purpose of removal or otherwise are forbidden by law. Section 37 of the Judicial Code provides in substance that attempts to confer jurisdiction by pretended changes of citizenship or residence, colorable assignments, or improper arrangement of parties will cause the suit to be dismissed by the federal court, or to be remanded to the state court from which it was removed, *ex mero motu*. This statute is intended to prevent attempts to confer upon the federal courts jurisdiction not given them by law.

Pretended changes of citizenship for the purpose of acquiring a right to sue in the federal courts constitute a fraud on the federal jurisdiction, and when discovered the courts will refuse to take cognizance of the case.<sup>1</sup> When the change of domicil is actual and bona fide and is accompanied by an intention to remain permanently, jurisdiction is conferred upon the federal courts; and this is true in spite of the fact that the change of domicil was made with the express purpose of conferring that jurisdiction.<sup>2</sup>

The same principle applies to transfers of choses in action. If the assignment of the claim is actual and bona fide, leaving no interest whatsoever in the assignor, the federal court will have jurisdiction, which will not be defeated by the motive of the parties in making or accepting the assignment.<sup>3</sup> But where the assign-

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<sup>33</sup> In *Hutchenson v. Stern*, 115 App. Div. 791, 101 N. Y. Supp. 145, the plaintiff was denied recovery (two of the five judges dissenting) for the loss of his wife's services on account of premature birth of a child caused by fright as a result of an assault upon the plaintiff by the defendant in the wife's presence. Recovery was allowed for miscarriage produced by fright occasioned by a violent assault upon some negroes on the plaintiff's premises and in her presence. *Hill v. Kimball*, *supra*. See *Gulf, etc., Ry. Co. v. Hayter* (Tex. Civ. App.), 55 S. W. 128. See also, *Preiser v. Weilandt*, 448 App. Div. 569, 62 N. Y. Supp. 890; *Watson v. Dilts*, *supra*.

<sup>1</sup> *Morris v. Gilmer*, 129 U. S. 315.

<sup>2</sup> *Warax v. Cincinnati, etc., Co.*, 72 Fed. 637.

<sup>3</sup> *Blair v. Chicago*, 201 U. S. 400.

ment is a colorable one—e. g., where it is made simply for the purpose of collection—the statute will apply and the court will refuse to take jurisdiction of the case.<sup>4</sup>

The statute also applies where a federal question has been raised for the purpose of conferring jurisdiction, and it is patent from the plaintiffs' pleading that the federal question is immaterial to the issue.<sup>5</sup> In order that this ground of jurisdiction may exist, it must appear that the case necessarily turns upon the construction of the federal Constitution or a federal statute.<sup>6</sup> And where the plaintiff asserts a federal question, which has no color of merit, or if he raises a federal question and the defendant by his answer admits his construction of it, the court may dismiss the suit of its own motion under the above named statute.<sup>7</sup>

The statute may also be violated by an improper joinder of parties, and where the court is satisfied that such joinder was merely for the purpose of conferring jurisdiction and contains no real merit, jurisdiction will be refused.<sup>8</sup>

While it is true that devices to confer upon federal courts jurisdiction not given them by statute are not permissible; yet this is a rule which does not work both ways, and devices to prevent jurisdiction are frequently successful. The reason for this seems to lie in the fact that there is an express federal statute prohibiting devices to *confer* federal jurisdiction, while there is no statute placing any restrictions on devices to *defeat* federal jurisdiction. The device itself, though it may constitute a defense to an action in the state court, in no manner confers jurisdiction on the federal courts.<sup>9</sup> The case presented here is simply one not covered by the statute.

In the case of *Oakley v. Goodnow*,<sup>10</sup> an Iowa corporation having a claim against a New York citizen, transferred it to another citizen of New York under an agreement that the assignee should act as trustee in collecting the fund and account to the assignor for it. On a petition for removal to the federal court by the defendant, alleging that the assignment was a mere device to defeat jurisdiction, the Supreme Court held that, though the purpose of the assignment was apparent, the federal court could not assume jurisdiction.

It is not an uncommon practice to join parties as defendants for the purpose of defeating jurisdiction. Thus, in damage suits against a non-resident corporation the plaintiff who desires to prevent removal of the suit from the state to the federal court may join as defendants with the corporation the employee who was responsible for the accident, where the citizenship of the employee

<sup>4</sup> *New Providence Tp. v. Halsey*, 117 U. S. 336.

<sup>5</sup> *Robinson v. Anderson*, 121 U. S. 522.

<sup>6</sup> *Florida C. & P. R. Co. v. Bell*, 176 U. S. 321.

<sup>7</sup> *McCain v. DesMoines*, 174 U. S. 168.

<sup>8</sup> *Detroit v. Dean*, 106 U. S. 537.

<sup>9</sup> *Providence Savings Society v. Ford*, 114 U. S. 635.

<sup>10</sup> 118 U. S. 43. See also, *Providence Savings Society v. Ford*, *supra*.

is that of the plaintiff.<sup>11</sup> In such a case the right of removal will be defeated, if the cause of action asserted against the employee is bona fide; because the plaintiff has a right to bring his action in this way and to join as defendants all those responsible for the injury. If the right exists, the motive for its exercise cannot defeat it.<sup>12</sup> Nor is this rendered any the less true by the fact that the defendants may have different defenses; for the right of removal is judged independently of the defenses.<sup>13</sup> But if it can be shown that the joinder is based on false allegations, with no expectation of recovery, and with the sole intent on the part of the plaintiff to defeat the right of removal, the court on proper charges in the petition will permit a removal of the case.<sup>14</sup> The right of removal in this case, however, practically necessitates proof of bad faith on the part of the plaintiff, and mere general allegations of fraud are not sufficient.<sup>15</sup> In the recent case of *Hollifield v. Southern Bell Telephone & Telegraph Co.* (N. C.), 90 S. E. 996, the plaintiff was injured while in the employ of the defendant. In a suit for personal injuries, alleged to be due to the defendant's negligence in not providing a reasonably safe place in which to work, the plaintiff joined with the non-resident corporation as co-defendant the foreman of the gang of men in which the plaintiff was employed, who was of the same state as the plaintiff. The non-resident corporation petitioned for removal of the case to the federal court, alleging that it was a non-resident and that the foreman was fraudulently joined as a defendant to prevent removal. The court denied the petition on the ground that it was not sufficient to charge generally or by indefinite averments that the joinder is or was intended to be in fraud and prevention of the right of removal.

In order that such jurisdiction should be regarded as fraudulent it must appear by allegation and proof, not only that it was made for the purpose of avoiding the jurisdiction of the federal court, but also that the grounds for joining the defendants are so unfounded and incapable of proof as to justify the inference that the joinder was made in bad faith and with no hope or intention of recovery against the party so joined.<sup>16</sup> Fraud in this connection must be proved by circumstantial and detailed evidence.<sup>17</sup>

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<sup>11</sup> *Hollifield v. Southern Bell Telephone & Telegraph Co.* (N. C.), 90 S. E. 996.

<sup>12</sup> *Warax v. Cincinnati, etc., Co.*, *supra*.

<sup>13</sup> *Charman v. Lake Erie & W. R. Co.* (C. C. A.), 105 Fed. 449.

<sup>14</sup> *Wecker v. National Enameling, etc., Co.*, 204 U. S. 176.

<sup>15</sup> *Warax v. Cincinnati, etc., Co.*, *supra*.

<sup>16</sup> *Arrowsmith v. Nashville & D. R. Co.*, 57 Fed. 165.

<sup>17</sup> *Landers v. Felton*, 73 Fed. 311.